

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shalini Tripathi	Team: Team # 4	CCRB Case #: 201101473	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/04/2011 12:15 PM	Location of Incident: Nostrand and Putnam Avenues	Precinct: 79	18 Mo. SOL 8/4/2012	EO SOL 8/4/2012	
Date/Time CV Reported Fri, 02/04/2011 11:04 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/04/2011 11:04 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Konrad Zakiewicz	13914	945127	079 PCT
2. POF Frances Urena	19481	945070	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Konrad Zakiewicz	Force: PO Konrad Zakiewicz used pepper spray against § 87(2)(b)	
B.POF Frances Urena	Force: PO Frances Urena pointed her gun at § 87(2)(b)	
C.POM Konrad Zakiewicz	Abuse: PO Konrad Zakiewicz strip-searched § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) filed a complaint with the CCRB via phone on behalf of her son, § 87(2)(b) on February 4, 2011 (encl. 6). § 87(2)(b) did not witness this incident. On the same date, at approximately 12:15 AM, near the intersection of Nostrand and Putnam Avenues in Brooklyn, § 87(2)(b) was arrested. The following allegations resulted:

- **Allegation A – Force: PO Konrad Zakiewicz used pepper spray against § 87(2)(b)**

§ 87(2)(g)

- **Allegation B – Force: PO Frances Urena pointed her gun at § 87(2)(b)**

§ 87(2)(g)

- **Allegation C – Abuse of Authority: PO Konrad Zakiewicz strip-searched § 87(2)(b)**

§ 87(2)(g)

- § 87(4-b) § 87(2)(g)

On May 23, 2011, a spin-off complaint to IAB was generated from § 87(2)(b)'s allegation that officers harass civilians in the area surrounding the intersection of Nostrand and Putnam Avenues in Brooklyn. This complaint was assigned the case number § 87(2)(b) and IAB log number § 87(2)(b).

Results of Investigation

Civilian Statement

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) year old black male with black hair and brown eyes who stands 5'10", and weighs 145 pounds.

§ 87(2)(b) was interviewed over the phone on February 8, 2011, (encl. 7 a) and at the CCRB on February 14, 2011 (encl. 7 b-f). § 87(2)(g)

On February 4, 2011, in the vicinity of Nostrand and Putnam Avenues in Brooklyn, § 87(2)(b) and his friend, § 87(2)(b) were walking home when a silver Crown Victoria pulled up near them. § 87(2)(b) heard one of the officers say, § 87(2)(b) can you come here for a minute? You know what it is.” § 87(2)(b) is familiar with the male officer, identified through the investigation to be PO Konrad Zakiewicz (described as a white male standing approximately 6’3” tall with brown hair, weighing about 190 to 220 pounds and approximately 31 to 32 years old). While PO Zakiewicz has never handcuffed § 87(2)(b) before, he always calls § 87(2)(b) over to him. § 87(2)(b) has estimated that this has happened 40 to 50 times over three years. PO Zakiewicz used to work at a post where § 87(2)(b) would hang out with his cousin.

PO Zakiewicz immediately took some money out of § 87(2)(b)’s left pocket and told him that he had a lot of money on him. He had \$1374 in his pocket. § 87(2)(b) told PO Zakiewicz that he worked and PO Zakiewicz then put the money back in his pocket. When PO Zakiewicz found the money on him, § 87(2)(b) attempted to move toward § 87(2)(b) who was standing two to three feet away and interacting with PO Zakiewicz’s partner, identified through the investigation to be PO Frances Urena (described as a Hispanic female, about 5’9” or 5’10” tall with black hair weighing between 140 and 150 pounds). PO Urena had her gun drawn and her attention was focused on § 87(2)(b).

PO Zakiewicz looked at PO Urena and then tried to move § 87(2)(b) against a nearby gate. PO Zakiewicz then pepper-sprayed § 87(2)(b) and threw § 87(2)(b) on the ground and put his knee in his back. PO Urena intervened and placed § 87(2)(b)’s arm behind his back. PO Zakiewicz searched through § 87(2)(b)’s pants, boxers, and buttocks. As § 87(2)(b) went to the ground, he hit his head and the side of his face. His face was swollen, but he didn’t have any injuries. At this point, § 87(2)(b)’s eyes were burning from the pepper spray and § 87(2)(b) was saying, “You can have it! You can have it! I got it on me. Just pick me up because my eyes are burning.” PO Zakiewicz removed some drugs from § 87(2)(b) while he was on the ground. PO Zakiewicz then placed § 87(2)(b) in the car and asked if he had more drugs. PO Zakiewicz searched through § 87(2)(b)’s boxers all the way back to the precinct.

When they arrived at the 79th Precinct stationhouse, the officers tried to wash out § 87(2)(b)’s eyes, but he was still uncomfortable, so he was transported to the hospital.

At the stationhouse, PO Zakiewicz strip-searched § 87(2)(b). PO Zakiewicz told § 87(2)(b) to remove his socks and sneakers and PO Zakiewicz folded them inside out. He also told § 87(2)(b) to pull his pants down and squat and searched § 87(2)(b)’s boxers. § 87(2)(b) was charged with § 87(2)(a) 160.50.

Victim: § 87(2)(b)

§ 87(2)(b) missed two scheduled interview appointments, on March 11, 2011, and April 15, 2011, without calling to cancel or reschedule. § 87(2)(b) did provide a phone statement regarding this incident on August 15, 2011, stating that he was unable to come to the CCRB because he was out of town, and he did not know when he would return.

§ 87(2)(b) stated that on the date of the incident, he was walking with § 87(2)(b) when two officers, a tall white male and a white female, who were identified by the CCRB as PO Konrad Zakiewicz and PO Frances Urena, stopped the men for no apparent reason. He also stated that PO Zakiewicz tried to search § 87(2)(b)’s pockets, but § 87(2)(b) told him that he could not search him. When § 87(2)(b) said this, PO Zakiewicz threw § 87(2)(b) against a gate, then to the ground, and then pepper-sprayed him. § 87(2)(b) also alleged that PO Urena was pointing her gun at him for the duration of the incident.

NYPD Statements:

Subject Officer: PO KONRAD ZAKIEWICZ

- § 87(2)(b) year old white male who stands 6'2", weighs 275 pounds, and has blond hair and brown eyes.
- On the date of the incident, he worked a conditions assignment in the 79th Precinct. He worked from 5:30 PM on February 3, 2011, to 7:05 AM on February 4, 2011, with PO Frances Urena in uniform and in a marked patrol car.

Memo Book

PO Zakiewicz had the following entries related to this incident in his memo book. At 1:05 AM, two males were stopped in front of 401 Nostrand Avenue. At 1:07 AM, PO Zakiewicz noted a crime arrest in regards to this stop. At 1:15 AM, he had arrived at the 79th Precinct for arrest processing. At 1:33 AM, EMS was called in regards to this arrest. At 1:55 AM, PO Zakiewicz noted that he was en route to § 87(2)(b) with the arrestee. At 3:39 AM, he was relieved from duty at the hospital by PO Fred Schaaf. At 3:55 AM, he returned to the 79th Precinct for arrest processing.

Arrest Report #§ 87(2)(b) (encl. 16)

§ 87(2)(b) s arrest report states that § 87(2)(a) 160.50
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CCRB Testimony

PO Konrad Zakiewicz was interviewed at the CCRB on April 21, 2011 (encl. 9). On February 4, 2011, PO Zakiewicz and his partner, PO Urena, were driving southbound on Nostrand Avenue. They stopped at a light when two individuals, identified through the investigation to be § 87(2)(b) and § 87(2)(b) crossed the street in front of the patrol car. PO Zakiewicz believed that he recognized § 87(2)(b) from a wanted poster and stopped the car to see if § 87(2)(b) would talk with the officers.

PO Urena exited the car first and approached § 87(2)(b) PO Zakiewicz followed PO Urena, but was behind her because he had to walk over a mound of snow to approach § 87(2)(b) As he walked toward § 87(2)(b) he walked past § 87(2)(b) and observed that § 87(2)(b) had drugs in his hand. He also detected a strong odor of marijuana coming from § 87(2)(b) PO Zakiewicz saw a saran wrap ball in § 87(2)(b) s hand and, from his experience, he knows that people take crack and twist it into a saran wrap ball. PO Zakiewicz also noted that he is acquainted with § 87(2)(b) While PO Zakiewicz has never arrested § 87(2)(b) PO Zakiewicz used to patrol a specific building where he had numerous drugs arrests. PO Zakiewicz knows from talking to people and arresting people in that building that § 87(2)(b) sold drugs from that location. Upon seeing the drugs in § 87(2)(b) s hand, PO Zakiewicz immediately

deemed § 87(2)(b) to be under arrest and he believed that § 87(2)(b) knew that he had been caught.

PO Zakiewicz grabbed § 87(2)(b). They both fell to the ground and were struggling on the floor. PO Zakiewicz believed that § 87(2)(b) was struggling in an attempt to escape § 87(2)(b). § 87(2)(b) subsequently told PO Zakiewicz that he had tried to run away toward Jefferson Avenue to dump the drugs in the snow). § 87(2)(b) was keeping his hands close to his body and wouldn't let PO Zakiewicz place him in handcuffs. During the struggle, § 87(2)(b) dragged PO Zakiewicz and they fell onto the gate of a shuttered storefront. PO Zakiewicz decided to pepper-spray § 87(2)(b) because he couldn't overcome § 87(2)(b)'s resistance and was afraid that the struggle would result in injuries to both of them. Once he was hit with the pepper spray, § 87(2)(b) immediately stopped resisting. PO Urena did not have her gun out during this interaction. However, she did use her flashlight and shined her light on § 87(2)(b) during the struggle to handcuff him.

PO Zakiewicz searched § 87(2)(b)'s pockets pursuant to the arrest. He believed that during the struggle § 87(2)(b) hid the drugs. In the patrol car, § 87(2)(b) told PO Zakiewicz that he would give him the "work." PO Zakiewicz clarified that "work" is a slang word for drugs. § 87(2)(b) had the drugs in his pants and he was able to "drag it out."

In the car on the way to the stationhouse, § 87(2)(b) told PO Zakiewicz that he had drugs in his jeans and PO Zakiewicz did recover some drugs while they were in the police car. Some of the drugs were recovered in the car and some were recovered in the precinct. Because § 87(2)(b) was wearing long johns, PO Zakiewicz felt that it was not inappropriate for him to remove § 87(2)(b)'s jeans. At the precinct, PO Zakiewicz searched § 87(2)(b) in the bathroom and asked § 87(2)(b) to squat, but he did not ask him to pull down his boxers.

Subject Officer: PO FRANCES URENA

- § 87(2)(b) *old Hispanic female who stands 5'8", weighs 163 pounds, has brown hair and brown eyes.*
- *On the date of the incident, she worked a conditions assignment in the 79th Precinct. She worked from 5:30 PM on February 3, 2011, to 2:05 AM on February 4, 2011, with PO Konrad Zakiewicz in uniform and in unmarked patrol car #561*

UF-250 #§ 87(2)(b)

PO Urena filed a stop and frisk report for the stop of § 87(2)(b) for burglary (encl. 10D). She noted that the circumstances leading to the stop were "fits description" and that § 87(2)(b) was frisked because of "furtive movements." It notes that no other people were stopped. The stop lasted four minutes.

Memo Book

PO Urena had the following memo book entries related to this incident. At 1:05 AM, she stopped a black male named § 87(2)(b) date of birth § 87(2)(b), in front of 401 Nostrand Avenue. She noted that she filed a UF-250 for burglary in regards to the stop and that § 87(2)(b) was with another male, observed walking southbound on Nostrand Avenue.

CCRB Testimony

PO Frances Urena was interviewed at the CCRB on May 4, 2011 (encl. 11). She recalled that the reason they stopped § 87(2)(b) was because PO Zakiewicz thought he recognized him from a wanted poster. She also recalled that she was the officer who spoke to § 87(2)(b) and that it was only after she finished recording his information that she looked up and saw that PO Zakiewicz was struggling to subdue § 87(2)(b). She recalled that § 87(2)(b) was resisting being handcuffed by flailing his legs and kicking his arms out, and that she went over to assist her partner for that reason. The two officers put § 87(2)(b) against a gate to prevent him from punching out, but he continued struggling. Therefore, the officers pushed him to the ground, where PO Zakiewicz pepper-sprayed § 87(2)(b) after which he was finally able to put him in handcuffs. PO Urena did not see PO Zakiewicz search § 87(2)(b). She did not draw her gun at any point, but recalled that she took out a flashlight to read § 87(2)(b)'s ID.

Medical Records

§ 87(2)(b)'s medical records from § 87(2)(b), indicate that he was admitted to § 87(2)(b) as a result of having been pepper-sprayed in the eyes (encl. 12s).

NYPD Documents

Command Log (encl. 14)

PO Zakiewicz's Command Log entry for § 87(2)(b) notes that he had been "maced on scene" but does not indicate anything else about his physical or mental condition. There is no notation that he was strip-searched.

Property Vouchers #§ 87(2)(b) and #§ 87(2)(b) (encl. 13 a-b)

These two property vouchers show that 32 envelopes of alleged heroin, 18 twists of alleged crack cocaine, and \$1372.80 were found on § 87(2)(b) at the time of his arrest.

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 5, 2012, with regard to the incident.

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Civilians' CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (encl. 3).
- This is the third CCRB complaint in which § 87(2)(b) has been listed as a victim (encl. 4). § 87(2)(b)

Subject Officers' CCRB Histories

- PO Konrad Zakiewicz has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. 1).
- PO Frances Urena has been a member of the service for three years and there are no substantiated CCRB allegations against her. (encl. 2).

Conclusion

Identification of Subject Officers

§ 87(2)(b)'s arrest report listed PO Zakiewicz as his arresting officer, and PO Zakiewicz confirmed his role in this incident. PO Urena confirmed that she was present at this incident.

Allegations Not Pleaded

§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Force: PO Konrad Zakiewicz used pepper spray against § 87(2)(b)

There is no dispute that PO Zakiewicz used pepper spray against § 87(2)(b). § 87(2)(b) noted that when PO Zakiewicz approached him, he tried to walk toward his friend, § 87(2)(b) who was several feet away from him. PO Zakiewicz testified that he deemed § 87(2)(b) to be under arrest when he approached him because he observed § 87(2)(b) in possession of narcotics. He also noted that § 87(2)(b) resisted and appeared to be hiding drugs while he tried to handcuff him. PO Zakiewicz cited a fear for both his and § 87(2)(b)'s safety during the struggle and justified using the pepper spray to control § 87(2)(b).

Patrol Guide Procedure 212-95 states that the use of pepper spray is “proper when a member reasonably believes it is necessary to effect an arrest of a resisting subject.” § 87(2)(g)

§ 87(2)(g)

Allegation B – Force: PO Frances Urena pointed her gun at § 87(2)(b)

Both § 87(2)(b) and § 87(2)(b) alleged that PO Urena drew and pointed her gun at § 87(2)(b) § 87(2)(g)

Allegation C – Abuse of authority: PO Konrad Zakiewicz strip-searched § 87(2)(b)

§ 87(4-b) § 87(2)(g)

§ 87(2)(b) stated that he was made to squat in the precinct bathroom while still wearing boxers. PO Zakiewicz stated that when they got to the stationhouse, he had § 87(2)(b) take off his jeans and squat in the bathroom. At this point, PO Zakiewicz shook out § 87(2)(b) s jeans and a small quantity of heroin fell out of them. PO Zakiewicz stated that the entire time, however, § 87(2)(b) wore a pair of long underwear and that he never touched § 87(2)(b) s genitals or buttocks, or put his hands anywhere underneath § 87(2)(b) s clothing.

§ 87(2)(g)

While PO Zakiewicz did not acknowledge that he did a full-blown strip-search, the action of asking § 87(2)(b) to remove his pants constitutes a strip-search. § 87(2)(g)

Patrol Guide Procedure 208-05, which states that, “A strip-search will be utilized when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods.” § 87(4-b) § 87(2)(g)

As such it is recommended that **Allegation C** be closed as **Exonerated**. § 87(4-b) § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date